defendant refuses to let him go on the land to take the buildings. The plaintiff sues for damages for detinue or conversion. *Held*, that the plaintiff recover. *Cooney* v. *Millar*, [1921] V. L. R. 254.

It has frequently been held that by agreement made between the owners of realty and personalty before annexation, fixtures remain personal property and may be removed. *Broaddus* v. *Smith*, 121 Ala. 335, 26 So. 34; *Dame* v. *Dame*, 38 N. H. 429. See EWELL, FIXTURES, 2 ed., 66–68, 150. Another view is that the fixtures become realty, but the original owner has a right of severance. *Trask* v. *Little*, 182 Mass. 8, 64 N. E. 206. Since by annexation the chattels assume the appearance of realty, and would, in the absence of a contract, be realty, the second view seems preferable. There is all the more reason for reaching this result in the principal case because there was no express provision that the buildings should be personalty. If there was simply a right of severance, there is no reason to extend it beyond the time bargained for. *Smith* v. *Park*, 31 Minn. 70, 16 N. W. 490. Even if it be said that the fixtures did become personalty by force of an implied contract, they should remain personalty only so long as the contract is operative. *Hughes* v. *Kershow*, 42 Colo. 210, 93 Pac. 1116. See *contra*, *Dame* v. *Dame*, *supra*. On either view, the principal case is wrong.

FOREIGN CORPORATIONS — SERVICE OF PROCESS — JURISDICTION WHEN CORPORATION IS NOT "DOING BUSINESS" IN THE STATE. —The defendant, a foreign corporation, had no place of business in New York, and owned no property in the state. It sent its treasurer into the state on several occasions to buy furniture. The treasurer had full power to contract for the defendant. On one of these trips he was served, as agent of the defendant, with a summons for an action growing out of one of the prior purchases. The service was made as provided for by statute. (1909 N. Y. CODE CIV. PRO., § 432.) The defendant moved to quash the service. *Held*, that the motion be denied. *National Furniture Co.* v. *William Spiegelman & Co.*, 189 N. Y. Supp. 449 (Sup. Ct.).

Under the statute involved here the New York courts for a long time held that whenever an officer of a foreign corporation was personally served within the state, the courts acquired jurisdiction over the corporation for all causes of action. *Sadler* v. *Boston & Bolivia Rubber Co.*, 140 App. Div. 367, 125 N. Y. Supp. 405, aff'd 202 N. Y. 547, 95 N. E. 1139. But it is now recognized that a judgment *in personam* can only be rendered against a foreign corporation when it is "doing business" within the state. See *Riverside, etc. Mills* v. *Menefee*, 237 U. S. 189; *Dollar Co.* v. *Canadian C. & F. Co.*, 220 N. Y. 270, 115 N. E. 711; *Pennoyer* v. *Neff*, 95 U. S. 714. This defendant was not "doing business" within the state. *Good Hope Co.* v. *Railway Barb Fencing Co.*, 22 Fed. 635 (S. D. N. Y.); *St. Louis Wire-Mill Co.* v. *Consolidated Barb-Wire Co.*, 32 Fed. 802 (E. D. Mo.). To say, as the court does, that the defendant, for the purposes of this action, was present "doing business," is only to confuse the issue. New phraseology cannot hide the inherent defects of the old doctrine. That doctrine not only denies due process of law, but also conflicts with every accepted theory of jurisdiction. See Austin W. Scott, "Jurisdiction over Nonresidents Doing Business within a State," 32 HARV. L. REV. 871. If it is attempted to support the case on some theory of regulation of transactions carried on in the state, such reasoning would equally apply to nonresident individuals. It is not applied to individuals when they are "doing business," and *a fortiori* would not apply where they are not "doing business." *Flexner* v. *Farson*, 248 U. S. 289; *Cabanne* v. *Graf*, 87 Minn. 510, 92 N. W. 461. Unfortunately New York is not the only jurisdiction which gives way to the tendency to make things

easier for its own litigants. *Premo Specialty Mfg. Co.* v. *Jersey-Creme Co.*, 200 Fed. 352 (9th Circ.); *Colorado Iron-Works* v. *Sierra Grande Mining Co.*, 15 Colo. 499, 25 Pac. 325; *Fond du Lac Cheese & Butter Co.* v. *Henningsen Produce Co.*, 141 Wis. 70, 123 N. W. 640.

FOREIGN EXCHANGE — SALE OF DRAFT — MEASURE OF DAMAGES ON DISHONOR. — The plaintiff paid the defendant $92,500 for a draft for 2,000,000 *lire* on the defendant's Genoese correspondent. Thereafter the Bank Commissioner took possession of the defendant's business and ordered the Genoese bank not to pay; these instructions were followed when the draft was later presented. The plaintiff sues to recover the original sum paid. *Held*, that the plaintiff recover only the rate of exchange for 2,000,000 *lire* at the date of dishonor. *American Express Co.* v. *Cosmopolitan Trust Co.*, 132 N. E. 26 (Mass.).

To recover the original deposit the plaintiff must prove either the right to rescind the contract for failure of consideration or the existence of a trust. There cannot be a trust without a *res*. Where actual money is transferred abroad, there is a *res*. *People ex rel. Zotti* v. *Flynn*, 135 App. Div. 276, 120 N. Y. Supp. 511. But, in the case of cable transfers and drafts, because of the lack of a *res*, the existence of any trust is generally denied. *Legniti* v. *Mechanics and Metals Bank*, 230 N. Y. 415, 130 N. E. 597. See *Strohmeyer and Arpe* v. *Guaranty Trust Co.*, 172 App. Div. 16, 157 N. Y. Supp. 955; Zechariah Chafee, Jr., "Progress of the Law — Bills and Notes," 33 HARV. L. REV. 255, 279; Austin W. Scott, "Progress of the Law — Trusts," 33 HARV. L. REV. 688, 689. Therefore the plaintiff advances the theory of rescission because of failure of consideration. See 3 WILLISTON, CONTRACTS, §§ 1375, 1457, 1467. Obviously had this been a simple executory contract by the defendant to furnish *lire* in Genoa, the plaintiff might have rescinded for the defendant's failure to perform. But there is more than a simple contract. The draft is the thing bought, the consideration. Merchants customarily regard the draft as a tangible thing; and, in effect, the transfer of the draft has merged the executory contract. If the draft is dishonored, the plaintiff must sue in damages for the breach of the obligation attached by law to the draft. See Byles, J., in *Suse* v. *Pompe*, 8 C. B. (N. S.), 538, 565.

HOMESTEAD — PROTECTION OF WIFE'S INTEREST — VALIDITY OF HUSBAND'S CONTRACT TO CONVEY HOMESTEAD. — A statute provides that a deed conveying homestead property shall be valid only if signed by both husband and wife. (C. & M. ARK. DIGEST, § 5542.) The defendant, without the assent of his wife, contracted to sell the plaintiff his homestead. On the wife's refusal to join in the conveyance, the plaintiff sues for damages. *Held*, that the plaintiff do not recover. *Ferrell* v. *Wood*, 232 S. W. 577 (Ark.).

For a discussion of the principles involved in this case, see NOTES, *supra*, p. 78.

HOMICIDE — SELF-DEFENSE — DUTY TO RETREAT FROM PLACE OF BUSINESS. — The defendant, while about his business of superintending certain excavations, was attacked by the deceased and killed him. The court instructed the jury that if retreat is reasonably safe one must retreat rather than kill. *Held*, that these instructions were erroneous. *Brown* v. *United States*, U. S. Sup. Ct., Oct. Term, 1920, no. 103.

It is possible that this decision stands for the proposition that there is, in general, no duty to retreat, a proposition difficult to maintain. See Joseph H. Beale, "Retreat from a Murderous Assault," 16 HARV. L. REV. 567. More narrowly construed, the decision may be regarded as extending to include a place of business the doctrine that one need not retreat from his dwelling-